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9 **BEFORE THE**  
**RESPIRATORY CARE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to  
13 Revoke Probation Against:

14 ALDEN G. DAVIS  
4137 61<sup>st</sup> Street  
15 Los Angeles, California 90043

16 Respiratory Care Practitioner License No. 26416

17 Respondent.

Case No. D1 2006 205

**ACCUSATION AND  
PETITION TO REVOKE  
PROBATION**

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) brings this Accusation and Petition to  
22 Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care  
23 Board of California, Department of Consumer Affairs (Board).

24 2. On or about August 7, 2007, the Board issued Respiratory Care  
25 Practitioner License No. 26416 to Alden G. Davis (Respondent). This license expired on  
26 February 29, 2008, and has not been renewed.

27 3. In a disciplinary action entitled "*In the Matter of the Statement of Issues*  
28 *Against Alden G. Davis*," Case No. S-377, the Board issued a decision effective August 7, 2007,

1 in which Respondent was issued a probationary license for a period of three (3) years with certain  
2 terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated herein  
3 by reference.

#### 4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the  
6 Board under the authority of the following laws. All section references are to the Business and  
7 Professions Code (Code) unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of  
9 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
10 8.3, the Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,  
12 and revoke licenses to practice respiratory care as provided in this chapter."

13 7. Section 3754 of the Code states: "The board may deny an application for,  
14 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions  
15 upon, a license in any decision made after a hearing, as provided in Section 3753."

16 8. Section 3750.5 of the Code states:

17 "In addition to any other grounds specified in this chapter, the board may deny,  
18 suspend, or revoke the license of any applicant or license holder who has done any of the  
19 following:

20 " . . .

21 "(b) Used any controlled substance as defined in Division 10 (commencing with  
22 Section 11000) of the Health and Safety Code. . . ."

23 9. Section 118 of the Code states:

24 " . . .

25 "(b) The suspension, expiration, or forfeiture by operation of law of a license  
26 issued by a board in the department, or its suspension, forfeiture, or cancellation by order  
27 of the board or by order of a court of law, or its surrender without the written consent of  
28 the board, shall not, during any period in which it may be renewed, restored, reissued, or

1 reinstated, deprive the board of its authority to institute or continue a disciplinary  
2 proceeding against the licensee upon any ground provided by law or to enter an order  
3 suspending or revoking the license or otherwise taking disciplinary action against the  
4 licensee on any such ground.

5 “(c) As used in this section, ‘board’ includes an individual who is authorized by  
6 any provision of this code to issue, suspend, or revoke a license, and ‘license’ includes  
7 ‘certificate,’ ‘registration,’ and ‘permit.’”

#### 8 COST RECOVERY

9 10. Section 3753.5, subdivision (a) of the Code states:

10 “In any order issued in resolution of a disciplinary proceeding before the board,  
11 the board or the administrative law judge may direct any practitioner or applicant found to have  
12 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
13 investigation and prosecution of the case.”

14 11. Section 3753.7 of the Code states:

15 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
16 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
17 administrative, filing, and service fees.”

18 12. Section 3753.1, subdivision (a) of the Code states:

19 “An administrative disciplinary decision imposing terms of probation may  
20 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
21 associated with monitoring the probation.”

#### 22 FIRST CAUSE TO REVOKE PROBATION

23 (Biological Fluid Testing)

24 13. At all times after the effective date of Respondent’s probation, Condition 3  
25 stated:

26 Respondent, at his expense, shall participate in random testing, including, but not  
27 limited to, biological fluid testing (i.e., urine, blood, saliva), breathalyzer, hair follicle  
28 testing, or a drug screening program approved by the Board. Test costs range from

1 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The  
2 frequency and location of testing will be determined by the Board.

3 At all times, Respondent shall fully cooperate with the Board or any of its  
4 representatives, and shall, when directed, appear for testing as requested, and submit to  
5 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs  
6 or other controlled substances.

7 If Respondent is unable to provide a specimen in a reasonable amount of time  
8 from the request, while at the work site, Respondent understands that any Board  
9 representative may request from the supervisor, manager or director on duty to observe  
10 Respondent in a manner that does not interrupt or jeopardize patient care in any manner,  
11 until such time Respondent provides a specimen acceptable to the Board.

12 Failure to submit to testing or appear as requested by any Board representative for  
13 testing, as directed, shall constitute a violation of probation, and shall result in the filing  
14 of an accusation and/or a petition to revoke probation against Respondent's respiratory  
15 care practitioner license.

16 14. Respondent's probation is subject to revocation because he failed to  
17 comply with Probation Condition 3, referenced above. The facts and circumstances regarding  
18 this violation are as follows:

19 As part of respondent's random drug testing program, he was required to  
20 telephone Compass Vision, Inc. (CVI) on a daily basis to determine if he needed to  
21 provide a specimen for testing and analysis. Respondent failed to telephone CVI on the  
22 following dates: October 18 and 31, 2007; November 15, 17, 19, and 23, 2007; December  
23 8, 11, 15, 19, 23 and 31, 2007; January 2, 14, 18, 22, and 28, 2008; February 5, 7, 12, 14,  
24 21, and 28, 2008; and March 3, 8, 12, 17, 18, and 22, 2008.

25 Respondent was scheduled to provide a specimen for testing and analysis on  
26 March 12, 2008. Respondent failed to provide a specimen as directed.

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1 tested positive at 24 ng/mL for Cannabinoids<sup>1</sup>, a controlled substance and mind altering  
2 drug.

3 THIRD CAUSE TO REVOKE PROBATION

4 (Obey All Laws)

5 17. At all times after the effective date of Respondent's probation, Condition 6  
6 stated:

7 Respondent shall obey all laws, whether federal, state, or local. Respondent shall  
8 also obey all regulations governing the practice of respiratory care in California.

9 Respondent shall notify the Board in writing within 14 days of any incident  
10 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

11 18. Respondent's probation is subject to revocation because he failed to  
12 comply with Probation Condition 6, referenced above. The facts and circumstances regarding  
13 this violation are as follows:

14 Respondent violated section 3750.5, subdivision (b) of the Code in that he used  
15 controlled substances, specifically Cannabinoids. The facts and circumstances set forth in  
16 Paragraph 15 of this Accusation and Petition to Revoke Probation are incorporated herein  
17 by reference.

18 FOURTH CAUSE TO REVOKE PROBATION

19 (Probation Monitoring Costs)

20 19. At all times after the effective date of Respondent's probation, Condition 9  
21 stated:

22 All costs incurred for probation monitoring during the entire probation shall be  
23 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or  
24 increased. Respondent's failure to comply with all terms and conditions may also cause

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25  
26 1. Cannabinoids contain THC (delta-9-tetrahydrocannabinol), the main active chemical in  
27 marijuana. Marijuana is a Schedule I controlled substance under Health and Safety Code  
28 section 11054, subdivision (d) (13). Marijuana (Cannabis sativa) induces psychotomimetic  
effects and thus is a mood altering drug within the meaning of Probation Condition 4.

this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he shall be required instead to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for costs incurred.

20. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

Respondent is delinquent in his probation monitoring costs in the amount of \$200.00 for the months of February and March 2008.

## FIFTH CAUSE TO REVOKE PROBATION

(Cost Recovery)

21. At all times after the effective date of Respondent's probation, Condition

1 13 stated:

2 Respondent shall pay to the Board a sum not to exceed the costs of the  
3 investigation and prosecution of this case. That sum shall be \$3,061.25 and shall be paid  
4 in full directly to the Board, in equal quarterly payments, within 12 months from the  
5 effective date of this decision. Cost recovery will not be tolled.

6 If Respondent is unable to submit costs timely, he shall be required instead to  
7 submit an explanation of why he is unable to submit these costs in part or in entirety, and  
8 the date(s) he will be able to submit the costs including payment amount(s). Supporting  
9 documentation and evidence of why the Respondent is unable to make such payment(s)  
10 must accompany this submission.

11 Respondent understands that failure to submit costs timely is a violation of  
12 probation, and submission of evidence demonstrating financial hardship does not  
13 preclude the Board from pursuing further disciplinary action. However, Respondent  
14 understands that providing evidence and supporting documentation of financial hardship  
15 may delay further disciplinary action.

16 Consideration to financial hardship will not be given should Respondent violate  
17 this term and condition, unless an unexpected AND unavoidable hardship is established  
18 from the date of this order to the date payment(s) is due.

19 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his  
20 responsibility to reimburse the Board for these costs.

21 22. Respondent's probation is subject to revocation because he failed to  
22 comply with Probation Condition 13, referenced above. The facts and circumstances regarding  
23 this violation are as follows:

24 Respondent is delinquent in his cost recovery in the amount of \$1, 330.75.

25 SIXTH CAUSE TO REVOKE PROBATION

26 (Valid License Status)

27 23. At all times after the effective date of Respondent's probation, Condition

28 15 stated:



1                Respondent shall maintain a current, active and valid license for the length of the  
2                probation period. Failure to pay all fees and meet Continuing Education requirements  
3                prior to his license expiration date shall constitute a violation of probation.

4                24.        Respondent's probation is subject to revocation because he failed to  
5                comply with Probation Condition 15, referenced above. The facts and circumstances regarding  
6                this violation are as follows:

7                        Respondent's license expired on February 29, 2008, and has not been renewed.

8                                CAUSE FOR DISCIPLINE

9                                        (Use of a Controlled Substance)

10                25.        Respondent is subject to disciplinary action under section 3750.5,  
11                subdivision (b) of the Code, in that he used controlled substances, specifically Cannabinoids.  
12                The facts and circumstances set forth in Paragraph 16 of this Accusation and Petition to Revoke  
13                Probation are substantially related to the qualifications, functions or duties of a respiratory care  
14                practitioner, and are incorporated herein by reference.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of  
5 California in Case No. S-377;

6 2. Revoking or suspending Respiratory Care Practitioner License No. 26416  
7 issued to Alden G. Davis;

8 3. Ordering Alden G. Davis to pay the Respiratory Care Board the costs of  
9 the investigation and enforcement of this case, and if probation is continued or extended, the  
10 costs of probation monitoring; and

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: April 2, 2008

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15 Original signed by Liane Zimmerman for:  
16 STEPHANIE NUNEZ  
17 Executive Officer  
18 Respiratory Care Board of California  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant  
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